IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4446 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

B P BHAVSAR

Versus

SUPERINTENDENT LAND RECORDS CUM CONSOLIDATION OFFICER

Appearance:

MR RS SANJANWALA for the Petitioner.

Ms.Sonal Vyas, Assistant GOVERNMENT PLEADER,

for Respondents No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/03/2002

ORAL JUDGEMENT

The petitioner has challenged the order of suspension dated 17th April, 2001 passed by the respondent No.1 as well as the order passed by the appellate authority dated 14/15.6.2001. At the relevant time, the petitioner was serving as an Enquiry Surveyor /

Enquiry Officer at Adajan, in the office of the respondent No.1. While he was serving on the said post, he was placed under suspension by order dated 17th April, 2001. The said suspension order was passed by the Superintendent, Land Records / Consolidation Officer, Surat. At the time of suspension, he was serving as Surveyor in the office of the Mamlatdar, at Bharuch. It is mentioned in the said suspension order that while the petitioner was serving as Enquiry Surveyor at Adajan Office, Circle I, it was found that certain serious irregularities were committed by the petitioner on the records in connection with T.P. Scheme No.13, Final Plot No.148/1. It is also mentioned in the said order that as per the report dated 12.4.2001, the petitioner should be placed under suspension. Accordingly, by exercising the powers under Rule 5 of the Bombay Civil Services (Discipline and Appeal) Rules, the petitioner was placed under suspension by the said order dated 17th April, 2001.

The said order was challenged by the petitioner by filing appeal before the Settlement Commissioner, Land Records, at Ahmedabad. However, by order dated 14th June, 2001, which is at page 35, Annexure `F', the said appeal was dismissed. The Appellate Authority has given certain reasons for coming to the conclusion that the order of suspension was issued on justifiable grounds by the first authority. Accordingly, aggrieved by the order of suspension, which is confirmed by the appellate authority in appeal, this Special Civil Application is filed.

The Appellate Authority found that the petitioner, while serving as Enquiry Surveyor at Adajan, posted a particular entry in the revenue record, being Entry No.5117, even though the said entry was taken in revision by the Prant Officer. It is also stated that he has shown wrong measurement of Survey No.250 and that he has entered name of a person, who had no interest in the land at all. It was found that he had committed grave misconduct by doing so. These are, of course, the reasons given by the appellate authority while dismissing the appeal of the petitioner.

It is required to be noted that the first authority, who has passed the suspension order, has not given any detailed reasons while placing the petitioner under suspension.

Mr.Sanjanwala, learned Advocate for the petitioner, has strongly argued that so far as the

original order of suspension dated 17th April, 2001, which is at page 22, is concerned, the same is passed by the Superintendent, Land Records, Surat, only on the basis of the direction given by the appellate authority. He also further argued that the petitioner is placed under suspension at the instance of the Settlement Commissioner, Land Records, Ahmedabad, because based on his report, which is relied upon by the Superintendent, Land Records, Surat, the petitioner is placed under suspension. He also submitted that the appellate authority himself was interested in the proceedings, because, at his instance, the petitioner was placed under suspension, and, therefore, the order of the appellate authority is bad in law, as it has been decided by the same authority, who has ordered the suspension of the petitioner, or, at least, that authority itself has recommended the suspension of the petitioner, and the Commissioner, who is the Subordinate Officer, was bound to obey the direction given by the higher authority. He has accordingly challenged the said suspension order on the aforesaid ground. Mr.Sanjanwala also further submitted that looking to the order at Annexure `C', by which the petitioner is placed under suspension, it is clear that the Superintendent, Land Record, Surat, had no alternative but to suspend the petitioner in view of the direction given by the higher authority.

Mr.Sanjanwala further argued that so far as the posting of entry is concerned, the petitioner was not in charge of posting any entry at all, as he was not assigned any such duty at the relevant time.

Ms.Sonal Vyas, learned AGP, on the other hand, supported the suspension order passed by the Authority.

Considering the rival submissions of the parties, one thing is certain that the Superintendent, Land Records, who has placed the petitioner under suspension, has passed the said order on the basis of direction given by the higher authority, i.e. the Commissioner. Even the suspension order itself makes that position clear. It is also required to be noted that even while passing the suspension order, the report of the Settlement Commissioner, Land Records, Ahmedabad, dated 12th April, 2001 is taken into consideration by the Superintendent, Land Records, Surat, as the reference of the same is made in the order dated 17th April, 2001 itself. It is, no doubt, true that the appellate authority has given certain reasons, justifying the suspension order. But, the fact that the said authority itself suggested the suspension of the petitioner, cannot be ignored. It is

also required to be noted that the Superintendent, Land Records, who has passed the suspension order, therefore, has not applied his own mind and, it seems that on the basis of the direction given by the higher authority, the suspension order is passed. In my view, the higher authority, who is otherwise also an appellate authority, should have left the question to the discretion of the Superintendent, Land Records, Surat, instead of directing him to suspend the petitioner from service. It is, no doubt, true that the suspension is not a penalty. However, at least, it has some civil consequences in the sense that a person has to serve in the Department on subsistence allowance only, and, at least, the authority, who is supposed to pass an order of suspension, is required to apply his mind objectively after taking into consideration the facts and circumstances and prime facie evidence on record. I also cannot ignore the fact that the appellate authority itself has given such direction, as per the submission of Mr.Sanjanwala, to suspend the petitioner. Still, that authority itself decided the appeal. In that view of the matter, it is not possible now to straight away accept the reasoning given by the appellate authority, as, prima facie, it appears that the appellate authority itself was interested in seeing that the petitioner is placed under suspension.

Under the aforesaid circumstances of the case, in my view, the first authority, i.e., the Superintendent, Land Records, Surat, should re-examine the entire case for the purpose of finding out as to whether still it is necessary to continue the petitioner under suspension any further. Since the impugned order of suspension is passed at the instance of the higher authority, the said order is required to be set aside. However, it will be open for the Superintendent, Land Records, to reconsider the case and thereafter, to take appropriate decision whether it is necessary to place the petitioner under suspension for the charges which are levelled against him. It is clarified that this Court has not expressed any opinion so far as the merits of the charges are concerned, as it is for the authority to consider the same. However, since the reading of the order gives an impression that the order is passed at the instance of the appellate authority, the Superintendent may consider the said aspect of suspension again and from the material on record, if the Superintendent, Land Records, is satisfied that it is a case where any suspension order is required to be passed, it is open for him to pass such order. However, it is clarified that the Superintendent may examine the facts of the case, records of the case and may take objective decision on the issue without

being influenced by the observations made by the appellate authority in its order. It is also required to be noted that, practically, a period of more than one year has already passed since the petitioner is placed under suspension and if the enquiry is likely to take more time, the Superintendent may also consider whether it is necessary to continue the petitioner under suspension. All these aspects are required to be considered by the Superintendent, Land Records, Surat, and this Court has not expressed any opinion on merits.

The Superintendent, Land Records, Surat, is accordingly directed to pass appropriate order again in accordance with law. In case the Superintendent is of the opinion that the suspension order is required to be passed against the petitioner, he may pass appropriate order.

The Suspension Order as well as the appellate order, at Annexures `C' and `F', are quashed and set aside. The petition is accordingly allowed subject to the observations made hereinabove. Rule is made absolute accordingly with no order as to costs.

Direct service is permitted.

7th March, 2002 (P.B. Majmudar, J.)

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(apj)